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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,749	02/03/2004	Hyoung-Sub Kim	8750-063	3653
20575	7590	05/31/2006	EXAMINER	
MARGER JOHNSON & MCCOLLOM, P.C. 210 SW MORRISON STREET, SUITE 400 PORTLAND, OR 97204			CAO, PHAT X	
			ART UNIT	PAPER NUMBER
			2814	

DATE MAILED: 05/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

H.A

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/771,749

Applicant(s)

KIM, HYOUNG-SUB

Examiner

Phat X. Cao

Art Unit

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 3.
Claim(s) rejected: 1, 2 and 4-13.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached papers.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

ADVISORY ACTION

1. Applicant argues that the width of the side spacers 60 would not be "substantially different" or "unequal" to the width of the contact spacer 66 because the width of the side spacers 60 is formed after the oxide film 60 having the width of about 50 to 150 nm is etched and the width of the contact spacers 66 is formed after the oxide film 66 having the width of about 30 to 100 nm is etched.

This argument is not persuasive because as clearly stated by Ohkawa (column 23, lines 17-23 and lines 42-46), the side spacers 60 are formed by depositing the oxide film of about 50 to 150 nm over the substrate whole surface and anisotropically etching the oxide film through RIE to leave side spacers 60 only on the side walls of the gate electrode structure, and the contact spacers 66 are formed by depositing the oxide film of about 30 to 100 nm over the substrate whole surface and anisotropically etching the oxide film through RIE to leave contact spacers 66 only on the side walls of the contact holes. It is noted that because the oxide film used for forming the side spacers 60 having the width (i.e., 50 to 150 nm) unequal or greater than the width of the oxide film used to form the contact spacers 66 (i.e., 30 to 100 nm) and because these oxide films are etched by the same vertical etching process (i.e., anisotropical etching), the width of the side spacers 60 would be "different" or "unequal" to the width of the contact spacers 66. Therefore, if Applicant believes that the side spacers 60 and the contact spacers 66 would not be "different" or "unequal" in width even though they are formed by oxide films

having different in width and by same vertical etching process, then Applicant is requested to support that position with facts.

2. Applicant further argues that Ohkawa fails to disclose that the width of the contact spacer 66 is less than the width of the side spacer 60.

This argument is not persuasive because Ohkawa clearly states at column 23, lines 17-23 that side spacer 60 is made of the silicon oxide film having a width of about 50 to 150 nm and the previously formed silicon oxide film. Therefore, the side spacer 60 would have the width greater than the width of the contact spacer 66 formed by a silicon oxide film having smaller width of about 30 to 100 nm.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phat X. Cao whose telephone number is 571-272-1703. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wael Fahmy can be reached on 571-272-1705. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PC
May 26, 2006


PHAT X. CAO
PRIMARY EXAMINER